

**Introduced by Senator Margett**

February 12, 2003

---

An act to amend Sections 594, 594.1, and 594.2 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 195, as introduced, Margett. Graffiti: punishment.

Existing law proscribes various acts of graffiti and authorizes the court to order the defendant to clean up, repair, or replace the damaged property himself or herself; keep the damaged property or another specified property in the community free of graffiti for up to one year; or perform community service, as specified.

This bill would instead require the court to make those orders. The bill would make conforming changes to related provisions. By revising the penalties for existing crimes and by increasing local supervision, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 594 of the Penal Code is amended to  
2 read:

3 594. (a) Every person who maliciously commits any of the  
4 following acts with respect to any real or personal property not his  
5 or her own, in cases other than those specified by state law, is guilty  
6 of vandalism:

7 (1) Defaces with graffiti or other inscribed material.

8 (2) Damages.

9 (3) Destroys.

10 Whenever a person violates this subdivision with respect to real  
11 property, vehicles, signs, fixtures, furnishings, or property  
12 belonging to any public entity, as defined by Section 811.2 of the  
13 Government Code, or the federal government, it shall be a  
14 permissive inference that the person neither owned the property  
15 nor had the permission of the owner to deface, damage, or destroy  
16 the property.

17 (b) (1) If the amount of defacement, damage, or destruction is  
18 four hundred dollars (\$400) or more, vandalism is punishable by  
19 imprisonment in the state prison or in a county jail not exceeding  
20 one year, or by a fine of not more than ten thousand dollars  
21 (\$10,000), or if the amount of defacement, damage, or destruction  
22 is ten thousand dollars (\$10,000) or more, by a fine of not more  
23 than fifty thousand dollars (\$50,000), or by both that fine and  
24 imprisonment.

25 (2) (A) If the amount of defacement, damage, or destruction is  
26 less than four hundred dollars (\$400), vandalism is punishable by  
27 imprisonment in a county jail not exceeding one year, or by a fine  
28 of not more than one thousand dollars (\$1,000), or by both that fine  
29 and imprisonment.

30 (B) If the amount of defacement, damage, or destruction is less  
31 than four hundred dollars (\$400), and the defendant has been  
32 previously convicted of vandalism or affixing graffiti or other  
33 inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6,  
34 or 640.7, vandalism is punishable by imprisonment in a county jail



for not more than one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court ~~may~~ *shall*, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, ~~or and, as a community service,~~ order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine, or any part thereof, by the parent upon a finding of good cause.

(e) As used in this section, the term “graffiti or other inscribed material” includes any unauthorized inscription, word, figure, mark, or design, that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) The court may order any person ordered to perform community service or graffiti removal pursuant to ~~paragraph (1)~~ ~~of subdivision (c)~~ to undergo counseling.

(g) This section shall become operative on January 1, 2002.

SEC. 2. Section 594.1 of the Penal Code is amended to read:

594.1. (a) (1) It shall be unlawful for any person, firm, or corporation, except a parent or legal guardian, to sell~~or~~, give, or in any way furnish to another person, who is in fact under the age of 18 years, any etching cream or aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence of majority and identity.

(2) For purposes of this section, “etching cream” means any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.

(3) For purposes of this subdivision, “bona fide evidence of majority and identity” is any document evidencing the age and

1 identity of an individual which has been issued by a federal, state,  
2 or local governmental entity, and includes, but is not limited to, a  
3 motor vehicle operator's license, a registration certificate issued  
4 under the federal Selective Service Act, or an identification card  
5 issued to a member of the armed forces.

6 (4) This subdivision shall not apply to the furnishing of six  
7 ounces or less of etching cream or an aerosol container of paint to  
8 a minor for the minor's use or possession under the supervision of  
9 the minor's parent, guardian, instructor, or employer.

10 (5) Etching cream, aerosol containers of paint, or related  
11 substances may be furnished for use in school-related activities  
12 that are part of the instructional program when used under  
13 controlled and supervised situations within the classroom or on the  
14 site of a supervised project. These containers may not leave the  
15 supervised site and shall be inventoried by the instructor. This use  
16 shall comply with Section 32060 of the Education Code regarding  
17 the safe use of toxic art supplies in schools.

18 (b) It shall be unlawful for any person under the age of 18 years  
19 to purchase etching cream or an aerosol container of paint that is  
20 capable of defacing property.

21 (c) Every retailer selling or offering for sale in this state etching  
22 cream or aerosol containers of paint capable of defacing property  
23 shall post in a conspicuous place a sign in letters at least  
24 three-eighths of an inch high stating: "Any person who  
25 maliciously defaces real or personal property with etching cream  
26 or paint is guilty of vandalism which is punishable by a fine,  
27 imprisonment, or both."

28 (d) (1) It is unlawful for any person to carry on his or her  
29 person and in plain view to the public etching cream or an aerosol  
30 container of paint while in any posted public facility, park,  
31 playground, swimming pool, beach, or recreational area, other  
32 than a highway, street, alley, or way, unless he or she has first  
33 received valid authorization from the governmental entity which  
34 has jurisdiction over the public area.

35 (2) As used in this subdivision, "posted" means a sign placed  
36 in a reasonable location or locations stating it is a misdemeanor to  
37 possess etching cream or a spray can of paint in that public facility,  
38 park, playground, swimming pool, beach, or recreational area  
39 without valid authorization.

(e) (1) It is unlawful for any person under the age of 18 years to possess etching cream or an aerosol container of paint for the purpose of defacing property while on any public highway, street, alley, or way, or other public place, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

(2) As a condition of probation for any violation of this subdivision, the court ~~may~~ *shall* order a defendant convicted of a violation of this subdivision to perform community service as follows:

(A) For a first conviction under this subdivision, community service not to exceed 100 hours over a period not to exceed 90 days during a time other than his or her hours of school attendance or employment.

(B) If the person has a prior conviction under this subdivision, community service not to exceed 200 hours over a period of 180 days during a time other than his or her hours of school attendance or employment.

(C) If the person has two prior convictions under this subdivision, community service not to exceed 300 hours over a period not to exceed 240 days during a time other than his or her hours of school attendance or employment.

(f) (1) Violation of any provision of this section is a misdemeanor. ~~Upon~~

(2) *Upon* conviction of any person under this section, the court ~~may~~ *shall*, in addition to any other punishment imposed, if the jurisdiction has adopted a graffiti abatement program as defined in subdivision (f) of Section 594, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti, as follows:

(1) For a first conviction under this section, for 90 days.

(2) If the defendant has a prior conviction under this section, for 180 days.

(3) If the defendant has two or more prior convictions under this section, for 240 days.

Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (e) or (f) to undergo counseling.

SEC. 3. Section 594.2 of the Penal Code is amended to read:

594.2. (a) Every person who possesses a masonry or glass drill bit, a carbide drill bit, a glass cutter, a grinding stone, an awl, a chisel, a carbide scribe, an aerosol paint container, a felt tip marker, or any other marking substance with the intent to commit vandalism or graffiti, is guilty of a misdemeanor.

(b) (1) As a condition of probation for any violation of this section, the court ~~may~~ *shall* order the defendant to perform community service not to exceed 90 hours during a time other than his or her hours of school attendance or employment.

(2) *If the jurisdiction has adopted a graffiti abatement program as defined in subdivision (f) of Section 594, participation in that program may be used to fulfill the community service requirement of paragraph (1).*

(c) For the purposes of this section:

(1) “Felt tip marker” means any broad-tipped marker pen with a tip exceeding three-eighths of one inch in width, or any similar implement containing an ink that is not water soluble.

(2) “Marking substance” means any substance or implement, other than aerosol paint containers and felt tip markers, that could be used to draw, spray, paint, etch, or mark.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars

1 (\$1,000,000), reimbursement shall be made from the State  
2 Mandates Claims Fund.

O

